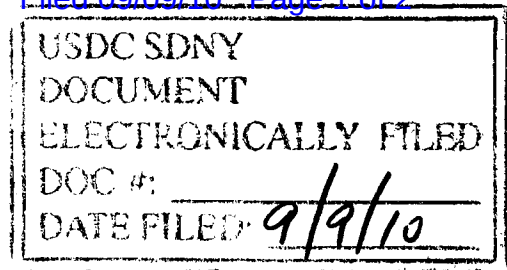


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



ELLIOTT GARNER,

Plaintiff,

-against-

CAPTAIN DWYER, et al.,

Defendants.

09 Civ. 5767 (RJH) (HBP)

ORDER

On July 20, 2010, Magistrate Judge Henry B. Pitman issued a Report and Recommendation ("Report"), which proposed that the Court dismiss the action for plaintiff's failure to prosecute pursuant to Fed. R. Civ. P. 41(b). Objections to the Report were due fourteen days thereafter. To date, the Court has received no objections or other communication from the plaintiff.

The district court will adopt a magistrate judge's report and recommendation when no clear error appears on the face of the record. *See Silva v. Peninsula Hotel*, 509 F. Supp. 2d 364, 365 (S.D.N.Y. 2007). Portions of a report to which objection is made, by contrast, are subject to de novo review. *See id.* (citing 28 U.S.C. § 636(b)). If a party fails to object to a report within fourteen days of being served with it, the party waives his right to object, and appellate review of the district court's decision adopting the report is precluded except in unusual circumstances not present here. *See United States v. Male Juvenile*, 121 F.3d 34, 38 (2d Cir. 1997).

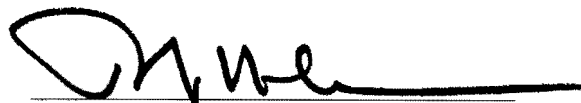
Here, no clear error appears on the face of the record. The Report recites the plaintiff's repeated failure to respond to defendants' discovery requests and or take any

other steps to prepare the case for trial. In an order dated July 1, 2010, Magistrate Judge Pitman directed plaintiff to respond to defense counsel's letter dated June 28, 2010, requesting that the action be dismissed for failure to prosecute. The order warned that a failure to respond would result in a recommendation that the action be dismissed. The plaintiff never responded to the July 1 order, nor did he request more time to file a response.

For these reasons, the Court adopts the Report. The action is dismissed, and the Clerk of the Court is directed to close the case.

SO ORDERED.

Dated: New York, New York
September 7, 2010

A handwritten signature in black ink, appearing to read 'R. Holwell', written over a horizontal line.

Richard J. Holwell
United States District Judge